

ARKANSAS REGISTER

Transmittal Sheet

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Secretary of State

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Effective Date 4/23/2014 Code Number 006.02.13-001F

Name of Agency DFA

Department ALCOHOLIC BEVERAGE CONTROL

Contact MILTON LUEKEN E-mail milton.lueken@dfa.state.ar.us Phone 682-1105

Statutory Authority for Promulgating Rules _____

Rule Title: Various changes to Alcoholic Beverage Control Division rules

Intended Effective Date

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☐ Emergency (ACA 25-15-204)

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Electronic Copy of Rule submitted under ACA 25-15-218 by:

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act. (ACA 25-15-201 et. seq.)

Milton Lueken
Signature

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Attorney
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3-24-14
Date

BY

SECRETARY OF STATE
STATE OF ARKANSAS

14 MAR 24 AM 10:40

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REGISTER DIV.

Section 1.19(45) Out of State Supplier Permit authorizes an out-of-state manufacturer, distiller, rectifier, brewer, importer, or producer of spirituous or vinous liquor to sell, deliver, transport, or ship to a wholesaler, distributor, or rectifier. A holder of this permit may only sell a spirituous or a vinous liquor to a wholesaler, distributor, or to any other person who is legally authorized by the laws of the State of Arkansas and the rules of the Alcoholic Beverage Control Division to receive, possess, transport, distribute, or sell a spirituous liquor or vinous liquor.

Amendment to Section 1.20(5)C. Has never been convicted of a felony or had a license to sell alcoholic beverages revoked within five (5) years preceding the date of application, whether issued by this state or any other state, and that he or she has not been convicted of violating any laws of this state, or any other state, governing the sale, possession, manufacture, or transportation of alcoholic beverages within five (5) years preceding the date of application;

Amendment to Section 1.23 Publication of Notice That Application Has Been Made for Permit. After filing an acceptable application with the Director, the applicant shall cause to be published at least once a week for two (2) consecutive weeks in a legal newspaper of general circulation in the city or locality where the business is to be located a notice that the applicant has applied for a permit to sell, manufacture or dispense controlled beverages, as applicable. The newspaper publishing the notice shall have a physical address within the county of the proposed location of the business identified in the application. If the county does not have a newspaper, then the publication shall be placed in a newspaper with the nearest physical address of the location of the business identified in the application. The notice shall be verified and shall give the name of the applicant and the name and address or location of the business, and shall state that the applicant is a resident of Arkansas, that he or she has good moral character, that he or she has never been convicted of a felony or had a permit revoked within the five (5) years preceding the date of notice. ***Provided***, that this requirement shall not apply if the applicant holds a restaurant mixed drink permit and subsequently makes application for a beer and/or wine permit only at the same location. ***It is further provided*** that applicants for a retail liquor permit or a private club permit shall be required to publish at least once a week for four (4) consecutive weeks in a legal newspaper as described above, per the authority of Act 735 of 2007.

Section 1.27.1 Transfer of Location Application or Request for Inactive Status.

No transfer of location application or request for inactive status may be filed or made with the Alcoholic Beverage Control Division unless the permitted outlet has completed inspection by Alcoholic Beverage Control Enforcement and has been open for business and prepared to sell or dispense alcoholic beverages for at least one full eight hour day.

Amendment to Section 1.32(6) Persons Convicted of Certain Crimes. Any individual, partnership or corporation if such individual or any member of such partnership or any officer, director, managing agent or any stockholder holding more than five percent (5%) of the stock of such corporation has been convicted of a felony or has within five (5) years before the date of application been under the sentence of any court for the conviction of any violation of the laws of the State of Arkansas or any state of the United States against possession, sale, manufacture, or transportation of alcoholic beverages;

~~**Section 1.33(9) Retail Beer Not to be Issued to Any Establishment Whose Business is Predominantly Motor Fuel Sales.**~~ No new or replacement retail beer sales permit nor transfer of location permit shall be placed in any establishment engaged in the sale of motor fuels which does not maintain an inventory of items for human consumption having a retail value at all times of at least \$7,500 (not including alcoholic beverage products);

SUMMARY OF SUBSTANTIVE CHANGES

This repeals the requirement that a retail establishment selling motor fuel must maintain at least a \$7,500 inventory in human consumables to obtain or maintain a retail beer permit.

Section 1.33 (13) Permits Not to be Issued to Outlets With Personal Living Quarters. No alcoholic beverage retail permit or private club permit will be issued nor will any such permit be transferred to any building which contains personal living quarters adjacent to the proposed area to be permitted which are accessible from the area to be permitted. **Provided,** that the Director or Board may authorize an exception to this Regulation for bona fide bed and breakfast inns, and motels and hotels that hold a permit in a designated restaurant area ("bona fide" shall be determined from such evidence as may be presented for consideration by the Director or Board);

Amendment Section 1.33 (15) Sale of Beer or Small Farm Wine Through Drive Up Windows Prohibited at Off Premises Retail Beer and Small Farm Wine Premises. Off premises retail beer and small farm wine permitted outlets with drive up windows must post a notice not less than three inches by five inches (3" x 5"), clearly affixed to the drive up window and clearly visible to patrons thereof, stating **"NO ALCOHOLIC BEVERAGES SOLD THROUGH THIS DRIVE UP WINDOW"**. The same notice must also be posted on the interior of the permitted outlet so as to be clearly visible to employees selling items, other than beer and small farm wine, through the drive up window.

~~**Section 1.79(25) Employing a Convicted Felon.** The holder of any permit issued by this agency had in employment during any hours the outlet was open for business in any capacity a convicted felon whose felony conviction has not been pardoned or record not expunged whose duties include the sale, service, or dispensing of alcoholic beverages, the control of crowds or entrance to the permitted premises, or the management of the business or activities of the outlet; such prohibited employment shall include but not be limited to managers, bartenders, waiters/waitresses, bouncers, door persons, and cashiers. **Provided,** that those convicted felons whose felony conviction does not involve bodily harm or the threat thereof to another person or the use of a weapon, as such is defined in Section 1.79(33) of these Regulations, may be employed in an Alcoholic Beverage Control permitted outlet; (Amended 8-15-07)~~

Amendment to Section 1.79(33) Allowing Possession of Weapons on

Premises. That the permittee, or any employee of the permittee, allowed, or knew, or reasonably should have known, that any person without a possessory or proprietary interest in the permitted outlet was in possession of a weapon on the permitted premises. As used in this Regulations, "weapon" means any firearm that is designed, made, or adapted to be fired, or any knife or club as defined by ACA § 5-73-120. Any weapon authorized to be in the permitted outlet pursuant to this Regulation must be kept out of sight and inaccessible to patrons and others who have no legal right to possess a weapon in the outlet. This Regulation excludes any law enforcement officer, any duly authorized agent of the Alcoholic Beverage Control Enforcement Division, and any licensed security guard, while acting in the course and scope of their official duties. ***Provided,*** that any person with a permit issued by the Director of the Arkansas State Police may carry a concealed handgun, as such is defined in ACA § 5-73-301 into a restaurant, as such is defined in ACA § 3-9-202(14). ***Provided further,*** that an employee of a retail liquor store who is licensed to carry a concealed handgun by the state may possess a handgun on the permitted premises.

Section 2.16 Manufacturers to Register Brands of Controlled Beverages; Manufacturers and Wholesalers Not to Change Brands Without Approval of Director.

- (1) The purpose of this Regulation is to provide guidelines for the business relations between Arkansas wholesalers of alcoholic beverages and distillers, manufacturers, importers and producers of such alcoholic beverages. Regulation in this area is considered necessary and appropriate for the following reasons:
 - A. To prevent unfair business practices, discrimination and undue control of such wholesalers by distillers, manufacturers, importers and producers;
 - B. To maintain stability and healthy competition in the alcoholic beverage industry;
 - C. To promote and maintain a sound and stable system of distribution of alcoholic beverages; and
 - D. To promote the public health, safety and welfare.
- (2) Every manufacturer, importer or producer of spirituous and vinous beverages doing business in the State of Arkansas shall submit to the Alcoholic Beverage Control Division one (1) Alcohol and Tobacco Tax and Trade Bureau Certificate of Label Approval for each brand of spirituous and vinous beverages and the brand label extension of each brand of spirituous and vinous beverages to be shipped for the first time by the shipper into or within the state and shall designate in the application for registration one (1) licensed liquor wholesaler in the state, who shall be the exclusive distributor of such brand or label within the state. Such designated wholesaler shall be initially approved by the Director and shall not be changed nor initially disapproved except for good cause, and the Director shall determine good cause after a hearing pursuant to the provisions set out in this Regulation. Any brands or labels previously registered in this state, and which have subsequently been withdrawn from distribution in this state, shall be treated in the same manner as the initial registration of brands or labels and are subject to the provisions hereof.

A brand label and brand label extension shall be registered by the supplier before the first shipment of each brand label and brand label extension into or within the state on or after July 1, 2013. A copy of the Alcohol Tobacco Tax and Trade Bureau Certificate of Label Approval for each brand label and brand label extension shall be submitted with the registration of each brand label and brand label extension.

The registration of a brand label and a brand label extension shall: 1)Be in writing or electronically submitted, 2)Be verified if it is submitted in

writing, and 3) Set forth information as the Director of the Alcoholic Beverage Control Division requires.

Each Alcohol and Tobacco Tax and Trade Bureau Certificate of Label Approval submitted for registration shall be accompanied by a registration fee of fifteen dollars (\$15.00) payable by check, cash, money order, or electronic payment.

All brand label and brand label extensions shall be renewed annually.

- (3) Any distiller, manufacturer, importer or producer desiring to change wholesalers with respect to any brand shall file with the Director a Wholesaler Change Request containing such of the following information as is applicable:
- A. The name of each brand involved;
 - B. The case volume in Arkansas for each brand for the current year or portion thereof and the two previous calendar years;
 - C. The name of the wholesaler currently distributing such brand;
 - D. The name of the proposed new wholesaler; and,
 - E. A detailed explanation of the specific business reasons for the request to change wholesalers. Business reasons which may be considered by the Director in determining good cause for authorizing a change of wholesalers will include:
 - 1. A wholesaler's bankruptcy or serious financial instability, including its consistent failure to pay its debts as they fall due or its failure to meet or maintain any objective standards of capitalization expressly agreed to between the wholesaler and the distiller, manufacturer, importer or producer; provided, such standards are determined by the Director to be commercially reasonable;
 - 2. A wholesaler's repeated violations of any provision of federal or state law or Regulation, whether or not such violations resulted in official action;
 - 3. A wholesaler's failure to maintain reasonable sales volume of the brand, taking into consideration such factors as the extent of the distiller's, manufacturer's, importer's or producer's advertising and promotion of the particular brand, prevailing economic conditions affecting sales generally or the extent of the wholesaler's efforts, or lack thereof, to promote a particular brand; and,

4. Any other factors relevant to such proposed change and which aid the Director in determining good cause.
- (4) At the same time that the original Wholesaler Change Request is filed with the Director, a copy thereof shall be mailed by the distiller, manufacturer, importer or producer to each wholesaler who may be affected by the proposed changes. Immediately upon receipt of any Wholesaler Change Request, the Director shall notify the currently designated wholesaler of the request by certified mail. Within fifteen (15) days after receipt of such notice by the affected wholesaler any such wholesaler or party required to be given notice by this Regulation may interpose written objections thereto. Such written objections shall be filed in the office of the Alcoholic Beverage Control Division and copies thereof shall be served by the objecting party upon the party proposing the change and upon all wholesalers who may be affected by the proposed change.
- A. Upon the receipt of an objection from any party, or upon his own motion, the Director shall hold a hearing, after providing due notice to all parties concerned, for the purpose of determining the truth of any matters of fact alleged by any party and determining whether the proposed changes are based upon sufficient cause and are otherwise consistent with the policies set out in Subsection 1 above. If it is determined from the evidence deduced at said hearing that the brand or label involved is the same as, or similar to, or is such a modification of, substitution of, upgrade of or extension of a brand or label which has already been registered by the distiller, manufacturer, importer or producer, so as to render it unjust or inequitable (without cause being shown) to designate the brand or label to a wholesaler different from the wholesaler designated for the brand or label being so modified, substituted, upgraded or extended, then such request shall be denied; **provided**, however, that nothing herein shall be construed to prevent the distiller, manufacturer, importer or producer from treating the matter as a desire to change wholesalers, and from proceeding under the provisions of Subsection 3 above, either before or after such determination.
- B. No proposed change will be approved by the Director which is based upon the failure or refusal of a wholesaler to comply with any demand or request of a distiller, manufacturer, importer or producer where such demand or request would result in a violation of any provision of federal or state law or Regulation. During such fifteen (15) day objection period, or until the proposed changes have been finally approved by the Director, the party proposing the change shall continue to supply the designated wholesaler, upon commercially reasonable terms, such reasonable quantities of the brand involved as the wholesaler may require. If, at any time, the Director finds a distiller,

manufacturer, importer or producer is not shipping the wholesaler a reasonable amount of merchandise, he may withdraw approval of all brands registered by such parties within the state.

- (5) Any hearing held by the Director pursuant to the provisions of Subsection 4 above shall be held within thirty (30) days after the receipt of any notice of objection to a Wholesaler Change Request. The findings of the Director made after such hearing shall be presented to the Alcoholic Beverage Control Board at its next regularly scheduled meeting. Any aggrieved party may appeal the decision of the Director to the full Board to be heard de novo and any such appeal hearing will be scheduled and held pursuant to hearing procedures established for the Alcoholic Beverage Control Division by state law and Alcoholic Beverage Control Regulations.
- (6) If no objection is filed to the Wholesaler Change Request as provided in Subsection 5 above, the proposed changes shall stand automatically approved by the Director at the expiration of such fifteen (15) day period, conditioned upon the manufacturer or importer repurchasing all inventory of the subject brand from the previously designated wholesaler at such wholesaler's laid-in cost.
- (7) Any distiller, manufacturer, importer or producer who obtains or acquires in any manner the right to sell, ship or distribute any label shall for the purpose of these Regulations stand in place of, and be subject to, all the rights, privileges, and duties and obligations of its predecessor or its predecessors from whom such brands or labels were obtained or acquired.
- (8) Every manufacturer or importer of beer or other malt products or light wine doing business in the State of Arkansas shall submit to the Alcoholic Beverage Control Division one (1) label for each brand of beer or malt product or light wine to be shipped for the first time into or within the state and shall designate with the application for registration any number of wholesalers in the state, each of whom shall be the exclusive distributor of such brand within the geographical territory assigned by the manufacturer or importer to such wholesaler. (Amended 7-24-87)
- (9) An unlawful dual distributorship is created when any manufacturer, importer, or other person attempts to designate as its distributor more than one (1) Arkansas liquor wholesaler in the state or wholesale beer permit holder to distribute the same brand of alcoholic beverage in the same geographic area (city, county, counties, state). Further, no person shall attempt to register any brand or label which is already distributed by a licensed wholesaler holding a brand registration authorization from the manufacturer or importer for a brand or label. The creation of such dual distributorships is prohibited. In addition to any remedies to any aggrieved party authorized by law, the Director may withdraw approval of any and all brands registered by any manufacturer or importer found to

be in violation of this Regulation, such findings to be made after a hearing pursuant to hearing procedures established for the Alcoholic Beverage Control Division by state law and these Regulations.

For purposes of this Regulation, a "brand" is defined as the same product or substantially the same product, as evidenced by the product label that must be filed with the Alcoholic Beverage Control Division. Identical or substantially identical labels will be considered and treated as the same brand. (Amended 8-19-03)

"Product" shall mean a brewed, fermented or distilled liquor. A brand for a product registered with the Alcoholic Beverage Control Division shall include the registered product as well as all derivatives or sub-categories of a registered product, without regard to whether such derivative or sub-category is brewed, fermented or distilled. "Product" shall not be construed to mean a particular malt, spirituous or vinous liquor, or any variety, category or sub-category thereof.

- (10) The terms, conditions and requirements of this Regulation are hereby expressly made a part of the terms of and as conditions to the approval granted by the Arkansas Alcoholic Beverage Control Division to distillers, manufacturers, importers or producers to do business in the state and by the application for, the acceptance of, or the conduct of business under any such approval, a distiller, manufacturer, importer or producer consents and agrees to comply with the terms, conditions and requirements of this Regulation. This Regulation does not apply to manufacturers or wholesalers of small farm wine. (Amended 8-15-07)

Amendment to Section 2.28(6) Samples Prohibited. That the manufacturer or wholesaler gave samples to any person, said samples being either in unbroken packages, partial packages or by the drink, except that a manufacturer or wholesaler may give a sample of distilled spirits, wine, or malt beverages to a retailer who has not previously purchased the brand from that manufacturer or wholesaler. No manufacturer or wholesaler may give to any retail outlet more than three (3) gallons of any brand of malt beverage, 750 ml of any brand of distilled spirits, or three (3) liters of any brand of wine.

Further, a wholesaler may provide retail package store owners or employees with a small sample of any brand of wine or liquor not previously purchased by such retail package store, with such sample not to exceed one (1) ounce per owner or employee. Such samples shall be poured from bottles owned by such wholesaler, brought into the retail package store by such wholesaler or its employees, and removed from the retail package store premises immediately after the conclusion of any such sampling activity. Any sampling conducted by a wholesaler in accordance with this Section shall not violate any other law or regulation prohibiting possession of an open container on the premises of a retail package store or violate any other law or regulation prohibiting an employee of a retail package store from drinking while on duty.

Sampling parties may not be given to retailers, consumers or prospective customers by manufacturers, distillers, importers, producers, distributors, retailers or wholesalers, except as permitted herein. Manufacturers, distillers, importers, producers, distributors, wholesalers and retailers may donate intoxicating liquor to charitable or non-profit organizations for on premises consumption only at non-profit functions where such organization receiving the intoxicating liquor does not hold a permit to dispense intoxicating liquors. The donation of intoxicating liquor by manufacturers, distillers, importers, producers, distributors, retailers or wholesalers may not occur on a permitted premises of an on premises permittee of this agency. Manufacturers, wholesalers, distillers, importers, producers, distributors, and retailers may provide keg-tapping equipment and hook-up service to a charitable or non-profit organization at a function;

~~**Section 2.28(7) Employment of Unpermitted Sales Agents Prohibited.** That the manufacturer or wholesaler knowingly employed a sales agent who did not have a permit for such manufacturer or wholesaler as required by this Title or who the manufacturer or wholesaler knew had violated any of these Regulations or any alcoholic beverage control law of the State of Arkansas;~~

Section 2.72 “Small Farm Wine Convenience Store” means an establishment which sells convenience goods, such as a limited range of grocery, snack items, and other human consumables or both convenience goods and motor fuel. The convenience store must prove, in order to apply for or renew the Small Farm Wine retail permit for convenience stores, that it has in inventory at least seven thousand five hundred dollars (\$7,500) worth of human consumable food items.

Section 2.75 Direct Shipment of Vinous Liquor to Arkansas Residents. Any winery licensed by this state or the state where its principal place of business is located and which is registered with the Alcoholic Beverage Control Division pursuant to ACA § 3-5-1703 may ship vinous liquor to an Arkansas consumer. Prior to the winery's first shipment into or within the state the winery shall (1) register with the Alcoholic Beverage Control Division; (2) provide the division with a copy of the winery's current licenses to manufacture wine issued by: (A) the state of domicile; and (B) the Alcohol and Tobacco Tax and Trade Bureau of the United States Treasury; and (3) pay a registration fee of twenty-five dollars (\$25.00).

A consumer must be physically present at the winery to purchase the vinous liquor to be shipped into or within the state and must provide identification to the shipping winery that the consumer is at least twenty-one (21) years old.

A winery shall ship only a vinous liquor to a private residence and may only ship one case of vinous liquor per consumer in any calendar quarter.

A shipment of a vinous liquor shall have a shipping label provided by the Alcoholic Beverage Control Division affixed to the shipping package. The fee for each label shall not exceed ten dollars (\$10.00).

A winery shall have the vinous liquor delivered to an Arkansas consumer during the hours of the day that alcoholic beverages may be purchased in the state.

A winery shall collect and remit to the Department of Finance and Administration all sales taxes and excises taxes due on a sale to an individual of this state as if the sale took place on the premises of an Arkansas Small Farm Winery, including without limitation taxes under ACA § § 3-5-1605, 3-7-104, 3-7-111, and 3-7-201.

Amendment Section 3.4 "On Premises Wine Restaurant or Café" means a place of business that is regularly used to serve a meal to a guest for compensation and has a suitable kitchen facility to serve an entire menu approved by the Alcoholic Beverage Control Division. The menu shall contain a selection of food and shall not be limited to sandwiches or salads. The kitchen shall have adequate refrigeration to preserve the food on the menu, shall be kept in a sanitary condition, and shall comply with the regulations of the Department of Health. For purposes of this regulation "meal" means food commonly ordered at various hours of the day and "guest" means a person who orders and is served a meal inside a café or restaurant during regular hours. The principal business at a restaurant or café shall be the serving of food for consumption on the premises. A drive-in food service establishment shall not be considered a café or a restaurant for purposes of this Section.

Section 3.17.1 Advertising or Providing Refunds or Rebates or Other Inducements by Arkansas Wholesalers and Retailers. No person holding any permit to sell any controlled beverages at retail or wholesale shall advertise that such controlled beverages are available for purchase in conjunction with a monetary rebate or give the impression that upon purchase of a controlled beverage the consumer will be entitled to a monetary refund or cash rebate from said retailer or wholesaler. Likewise, no such person shall allow or give any such refund or rebate to any consumer in conjunction with the purchase of any alcoholic beverages, except as provided for below.

A retail permittee may offer, advertise and provide a discount by promoting low prices or by specifically running a "special" on a particular alcoholic beverage. However, any discount provided must not be lower than the invoice price of the alcoholic beverage. Further, the promotion of incentive programs directed at specific groups (e.g. seniors, college students, military enlistees, law enforcement personnel, etc.), will not be allowed. However, loyalty programs will be allowed as long as the alcoholic beverage that is discounted based on frequent purchases is not lower than the invoice price of the discounted item. The loyalty discount may not be redeemed on the same visit that it is earned, but may be applied to any future visit. These guidelines apply to all print, broadcast, and internet promotions and advertisement by alcoholic beverage permittees.

Further, no such person named above shall distribute or offer any coupon or other inducement to purchase alcoholic beverages to the consumer. Exceptions to these provisions are as set forth in Section 3.17.2 of these Regulations.

Amendment to Section 3.19(2) Samples Prohibited. The permittee or any agent, servant or employee of the permittee accepted from any person or sold or gave to any person any samples, either in unbroken packages, partial packages, or by the drink; this provision is applicable to private clubs, and all holders of retail permits. Provided, retail liquor stores may offer samples of intoxicating liquors of all kinds pursuant to permit as authorized by Act 455 of 2007. Further, retail permit holders may donate intoxicating liquor to charitable or non-profit organizations for non-profit functions where the charitable or non-profit organization does not have a permit to dispense intoxicating liquors and where such functions occur on a permitted premises of an on premises permittee of this agency. Provided further, that holders of large attendance facility permits in which pairmutuel wagering has been authorized by law may offer samples of alcoholic beverages by the drink to patrons who are in that area of the permitted facility where games of skill are housed. Provided further, that holders of permits in hotels and holders of private club permits that own or lease space within a hotel building may offer samples of alcoholic beverages by the drink to registered guests of the hotel as part of a manager's reception. All such samples offered shall be subject to the gross receipts and use taxes as a withdrawal from stock and shall be paid by the permit holder in the manner prescribed by law.

Amendment to Section 3.19(4) Sales to Certain Persons Prohibited. The permittee or any employee, agent or servant of the permittee sold to, offered for sale, dispensed, gave away, allowed the possession or consumption of, or otherwise disposed of or furnished_ any controlled beverages by any person who is not a person permitted by these Regulations or by the laws of the State of Arkansas to purchase, receive, possess, or consume such beverages, including but not limited to any of the following persons:

Section 3.19(10)A. Employment of Certain Persons Prohibited. The permittee knowingly had in his employment any person who is not qualified by reason of these Regulations or by reason of any alcoholic beverage control law of the State of Arkansas for the position to which such person was employed, including but not limited to, any of the following persons:

- A. **Persons Convicted of Certain Laws.** Any person in the serving or mixing of controlled beverages, or in the dispensing of alcoholic beverages, the control of crowds or entrance to the permitted premises, or the management of the business or activities of the outlet who has pleaded guilty or nolo contendere to or has been found guilty of; (1) a violation of a law concerning the possession, sale, manufacture or transportation of intoxicating liquor or (2) a felony and who is on probation or serving a suspended sentence as a result of the felony. **Provided**, a person who has pleaded guilty or nolo contendere to or has been found guilty of a felony and who is on probation or serving a suspended sentence as a result of the felony may be employed by an on premises permittee if the person works only in a kitchen and alcoholic beverages are not served out of the kitchen. **Provided further**, a person who has pleaded guilty or nolo contendere to or has been found guilty of a felony and who is not on probation or serving a suspended sentence as a result of the felony may be employed by an on premises permittee in any capacity. **Provided**, that those convicted felons whose felony conviction involves bodily harm or the threat thereof to another person or the use of a weapon, as such is defined in Section 1.79(33) of these Regulations, may not be employed as a manager, security guard, bouncer, or in any position that requires the handling of alcoholic beverages.

Section 3.19(10) B. Persons Under Twenty-One (21); Exceptions. Any person less than twenty-one (21) years of age in the mixing, serving, selling or handling of controlled beverages. **Provided**, that nothing in this Regulation shall prohibit a minor eighteen (18) years of age or older to be employed as a musician or entertainer or to be employed in the preparation or serving of food or in the housekeeping department of any establishment permitted by this Agency; and nothing in this Regulation shall prohibit a minor eighteen (18) years of age or older, with the written consent of a parent or guardian, to be employed in the sale of beer and small farm wine at retail grocery establishments, nor from being employed by permitted liquor and beer wholesalers and by permitted small farm wineries to handle alcoholic beverages at the place of business of the permitted wholesaler or winery; and further, nothing in this Regulation shall prohibit a minor of any age to be employed as an entertainer when the minor and his parent or guardian perform together as part of the same show and the parent or guardian remains with the minor in a supervisory capacity. **Provided** further, minors sixteen (16) and seventeen (17) years of age may be employed at those permitted outlets that qualify as retail grocery establishments, but may not handle alcoholic beverages. (Amended 8-16-2011)

For purposes of this Regulation, retail grocery establishments shall not include those establishments engaged in the sale of motor fuels which do not maintain an inventory of human consumables (not including alcoholic beverage products) in an amount in excess of fifty thousand dollars (\$50,000). The burden of providing this inventory requirement shall be on the permittee.

Any person or organization which holds a public restaurant mixed drink permit, a public hotel-motel-restaurant mixed drink permit, a restaurant wine permit, or a private club permit may employ persons 19 years of age or older to sell and handle alcoholic beverages. **Provided**, that persons 19 years of age and older may not act as bartenders but they may otherwise open bottles of wine and beer and serve the alcoholic beverages and take payment for the same.

Amendment to Section 4.6 “Restaurant” means any public place or private place that is primarily engaged in the business of serving a meal for consumption on the premises to a guest, has a seating capacity of at least fifty (50) people, and has a suitable kitchen facility to serve the entire menu approved by the Alcoholic Beverage Control Division. The menu shall contain a selection of food and shall not be limited to sandwiches or salads. The kitchen shall have adequate refrigeration to preserve the food on the menu, shall be kept in a sanitary condition, and shall comply with the regulations of the Department of Health. Food from the menu shall be available from opening time until (2) hours before closing time. “Meal” means the usual assortment of food commonly ordered at various hours of the day and “guest” means a person who orders and is served a meal inside a restaurant during regular hours. **Provided,** that nothing in this regulation regarding the seating capacity of a restaurant shall preclude a person with a concealed handgun permit issued by the Director of the Arkansas State Police from carrying a concealed handgun into a restaurant as defined herein.

Section 5.14.2 "Restaurant" means any public place or private place that is primarily engaged in the business of serving a meal for consumption on the premises to a guest, has a seating capacity of at least fifty (50) people, and has a suitable kitchen facility to serve the entire menu approved by the Alcoholic Beverage Control Division. The menu shall contain a selection of food and shall not be limited to sandwiches or salads. The kitchen shall have adequate refrigeration to preserve the food on the menu, shall be kept in a sanitary condition, and shall comply with the regulations of the Department of Health. Food from the menu shall be available from opening time until (2) hours before closing time. "Meal" means the usual assortment of food commonly ordered at various hours of the day and "guest" means a person who orders and is served a meal inside a restaurant during regular hours.

Section 5.30 Private Club in Dry Area to Dispense Alcoholic Beverages to Members and Guests. A private club located in a dry area of the state may dispense alcoholic beverages only to members and to guests who are in the physical company of a member. **Provided,** that an employee of the private club may not act as a host for any guest.

Section 5.47 Advertising the Availability of Alcoholic Beverages to the Public by a Private Club in a Dry Area. Private clubs in any area of the state where the sale of alcoholic beverages is prohibited by law ("dry" area) are prohibited from using the advertising media, including any signs or trade names on the exterior of the club building, to promote the consumption and use of alcoholic beverages within the club. The use of terms such as "happy hour", or any other term or brand name that generally identifies any brand or mixture of alcoholic beverages, is included in this prohibition.

No private club, located in either a "wet or dry" area of the state, may advertise or use any part of the advertising media to announce social functions of general interest to the membership, entertainment, or other similar activities within the confines of the club property, without preceding such advertisement or announcement with the words "Notice to Members" or "Attention Members" prominently displayed, and the name of the club or organization sponsoring such social activities.

~~Section 5.60 Advertising Availability of Alcoholic Beverages to the Public by a Private Club in a "Wet" Area.~~ Private clubs in any wet area of the state are prohibited from using the advertising media to promote the consumption, use or availability of distilled spirits within the club. The use of terms which connote the availability of distilled spirits drinks, such as "Margarita Special", "Martinis", or any other term or brand name that generally identifies any brand or mixture of distilled spirits, is included in this prohibition. However, if an organization located in a wet area holding a private club permit also holds a retail beer and/or retail level wine permit, then said private club organization may advertise the availability of beer and/or wine for consumption on the private club premises. Further, the visual observation of the dispensing, service, or consumption of alcoholic beverages or alcoholic beverage signage within a private club located in a wet area does not constitute a violation of this Section.